

MINUTE ITEM

This Calendar Item No. 1.
was approved as Minute Item
1 by the State Lands
Commission by a vote of 3
to 0 at its 7-12-79
meeting.

CALENDAR ITEM

4.

7/79
PRC 3376.1
Atkins
Hadly
Williams

REINSTATEMENT AND CONSENT TO ASSIGNMENT
AND AMENDMENT OF LEASE PRC 3376.1

LESSEE AND ASSIGNOR:

Decon Corporation
111 Elm Street
San Diego, California 92101

PROPOSED ASSIGNEE:

Huntington Partnership
c/o James Thomas, Esq.
2029 Century Park East, Suite 1200
Los Angeles, California 90067

PROPERTY:

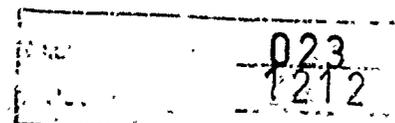
A parcel of tide and submerged land in
Sunset Bay, Orange County.

BACKGROUND:

By a letter application dated May 27, 1965,
Decon Corporation requested a 15-year lease
with 3 successive renewal options of 10-years
each for the purpose of the construction
and maintenance of small boat slips appurtenant
to the operation of a condominium situated
on the adjacent upland and for a permit
to remove approximately 40,000 cubic yards
of material and to use 20,000 cubic yards
thereof for the purpose of filling adjacent
property owned by Decon. Said permit (PRC 3355)
was separate and distinct from the provisions
of the lease. Decon intended to complete
the dredging and installation of a bulkhead
on the adjacent uplands prior to commencement
of the lease. Said permit was approved
at the August 26, 1965, Commission meeting.
Decon paid \$.05 per cubic yard royalty
for the dredged materials. The Commission
approved issuance of the lease on September 23,
1965.

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On February 23, 1967, the lease was amended to provide for commencement on the start of construction of the boat slips, but no later than August 1, 1967, and to be completed not later than August 1, 1968.

At its meeting on April 28, 1969, the Commission approved, at the request of Decon, the assignment of Decon's lease to California Federal Savings and Loan Association.

In the early part of 1970, Decon petitioned for:

1. Reassignment of the lease to Decon;
2. An amendment to increase the number of slips;
3. An amendment to change the completion date to January 1, 1972;
4. Hypothecation of the lease to the Ford Foundation;
5. An assignment of the lease to F-S Investment Company.

The Commission, at its meeting on March 26, 1970, approved the requests of Decon.

On July 26, 1971, the Commission authorized an amendment to Decon's lease, again increasing the number of boat slips and extending the completion date of construction to January 1, 1974.

The upland parcel was deeded to Ford Foundation on September 13, 1972, in settlement of a lawsuit and in lieu of foreclosure.

On February 6, 1974, the Commission rescinded items 4 and 5 noted above which had authorized hypothecation of the lease to the Ford Foundation and the assignment of lease to F-S Investment Company.

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The July 24, 1975, Calendar Item No. 19 recommended termination of Decon's lease for failure to complete the construction of the boat slips. At the request of Decon, the matter was put over in order for Decon to negotiate the matter with the upland owner and the State regarding termination of said lease on the condition that such action would be without prejudice to the rights of the parties.

On September 29, 1975, the Commission authorized the termination of the lease should Decon fail to perform the conditions of the lease. Decon failed to perform the conditions of the lease and therefore Lease PRC 3376.1 was terminated effective November 10, 1975. The Notice of Termination was recorded on November 17, 1975.

On May 20, 1976, Decon filed a "Complaint to Quiet Title to a Leasehold Estate, for Declaratory Relief and to Remove a Cloud on Title to a Leasehold Estate" against the State. This action was based on the termination of the lease by the State.

On September 29, 1976, the State answered Decon's complaint and filed a "Cross Complaint to Quiet Title to Real Property."

On January 12, 1979, Decon was granted leave to amend its complaint to include the present upland owner Continental Development of California, Inc., as a defendant allegedly because Continental was asserting an interest in the leased premises.

Since 1976, this matter has been in litigation. Trial had been set for September 1979. However, in light of this proposed settlement the trial date has been continued.

CURRENT SITUATION:

Recently the Huntington Partnership expressed an interest in obtaining Lease 3376.1. Huntington currently has 2 leases adjacent

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to Lease 3376.1 and is constructing a marina on those premises. Huntington proposes to expand its marina operations to the premises involved in Lease 3376. Huntington also proposes to expand the current area to be leased to 3.25 acres, assuming permission from the appropriate government agencies can be obtained.

Huntington's proposal served as a catalyst for a proposed four party agreement between the State, Decon, Continental, and Huntington, which would resolve the pending litigation and result in an assignment of the lease to Huntington. The salient terms of this agreement include:

1. The State, for the purposes of settlement only, will reinstate Lease 3376.1 and consent to its being assigned by Decon to Huntington.
2. Decon will pay all rent due on the lease since August 1, 1975, plus 9% interest (\$10,955.81), and will assign the lease to Huntington. Decon will receive \$150,000 from Huntington for assigning its interest in the lease to Huntington.
3. Huntington will accept the assignment of the lease conditioned only upon it obtaining the necessary government approvals for its project. Huntington will be responsible for the rent from August 1, 1979. However, the lease will be amended to provide for the State's current leasing covenants, an increased area to be leased, with a maximum of 40 boat slips and an increase in rent, based on 6% percent of Huntington gross income from its marina, with a minimum of \$4,600 per year. Other provisions of the amended lease include a \$5,000 Surety bond, and Liability insurance in the amount of \$1,000,000 combined single limit.

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4. Continental will receive the right of first refusal on 25 boat slips in exchange for waiver of any right it may have to the leased premises for the term of the Lease. This waiver will be binding on Continental's heirs and assigns.

All the funds will be held in escrow until Huntington receives the government approvals necessary to complete its proposed project. thereafter, the funds will be distributed and the new lease will become effective. Should Huntington fail to get the necessary approvals the Settlement Agreement will not be effective and a new trial date will be set.

5. This project is situated on State land identified as possessing significant environmental values pursuant to P.R.C. 6370.1 and is classified in a use category Class B, Limited Use.

Staff has coordinated this project with those agencies and organizations who nominated the site as containing significant environmental values. They have found this project to be compatible with their nomination.

6. A cumulative EIR was approved by the Commission at its meeting on March 26, 1976. The impact of future development at Huntington Harbour was included in this report. The report concluded there does not seem to be any significant adverse impacts which will be created by the development plans as they relate to recreation. A notice of determination has been received. Any further expansion of the marina over 40 boat slips will require further environmental consideration and an amendment to the lease.

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7. This proposed marina expansion will be reviewed by the California Coastal Commission.

EXHIBIT: A. Land Description. B. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

1. REINSTATE LEASE 3376.1 FOR THE PURPOSE OF EFFECTUATING THE SETTLEMENT ONLY.
2. AUTHORIZE THE EXECUTION AND RECORDING OF THE SETTLEMENT AGREEMENT, CONSENT TO ASSIGNMENT, ASSIGNMENT OF LEASE, AND LEASE 3376.1 AS AMENDED, WHICH PROVIDES FOR A RENTAL PAYMENT OF 6% OF GROSS ANNUAL INCOME WITH A \$4,600 MINIMUM ANNUAL RENTAL PAYMENT WITH PROVISION FOR LIABILITY INSURANCE OF \$1,000,000 COMBINED SINGLE LIMIT, AN AMENDED LEASE AREA TO CONTAIN 40 BOAT SLIPS, WHICH IS DESCRIBED ON EXHIBIT "A" ATTACHED HERETO.
3. FIND THAT NO EIR IS REQUIRED AS THIS PROPOSED DEVELOPMENT WAS INCLUDED IN A CUMULATIVE EIR APPROVED BY THE COMMISSION AT ITS MEETING ON MARCH 25, 1976.
4. FIND THAT ADEQUATE PROVISIONS HAVE BEEN MADE FOR THE PERMANENT PROTECTION OF THE SIGNIFICANT ENVIRONMENTAL CHARACTERISTICS IDENTIFIED PURSUANT TO SECTION 6370.1 OF THE P.R.C.
5. DETERMINE THAT THE PROJECT IS CONSISTENT WITH THE PROVISIONS OF ARTICLE 6.5 OF TITLE 2 OF THE CAL. ADM. CODE.
6. AUTHORIZE THE STATE LANDS COMMISSION STAFF AND THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE FOREGOING AGREEMENTS.

EXHIBIT "A"
LAND DESCRIPTION

VI 3376

A parcel of submerged land in the State-owned channel of Huntington Harbour, fractional Section 19, T5S, R11W, and fractional Section 24, T5S, R12W, SGM, in the City of Seal Beach, Orange County, California, described as follows:

BEGINNING at the most easterly corner of Tideland Location No. 141, as shown upon that certain map filed in Book 3, Page 45, Record of Surveys, Orange County Recorders Office, thence the following five courses:

1. N 73° 45' 00" W 545.24 feet (along the northeasterly line of said Tideland Location No. 141)
2. N 16° 15' 00" E 260.00 feet;
3. S 73° 45' 00" E 598.66 feet;
4. S 41° 53' 59" W 210.65 feet;
5. S 12° 03' 54" E 79.63 feet to the point of beginning.

END OF DESCRIPTION

Prepared *John Munnick*

Checked *J. J. [unclear]*

Reviewed *Betty A. Walden*
R.N.

Date *6/20/79*

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